

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re Patent Application of

VELKE et al.

Serial No. 10/712,261

Filed: November 14, 2003

Title: WALK-BEHIND LAWN MOWER

Atty Dkt. JAR-3696-61

C# M#

TC/A.U.: 3671

Examiner: A KOVACS

Date: March 8, 2007



AS
IFW

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences

from the last decision of the Examiner twice/finally rejecting applicant's claim(s).

\$500.00 (1401)/\$250.00 (2401) \$

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application

\$500.00 (1402)/\$250.00 (2402) \$ 250.00

☐ Credit for fees paid in prior appeal without decision on merits

-\$ ()

☐ A reply brief is attached.

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)

One Month Extension \$120.00 (1251)/\$60.00 (2251)

Two Month Extensions \$450.00 (1252)/\$225.00 (2252)

Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)

Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on

-\$ ()

TOTAL FEE ENCLOSED \$ 250.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

901 North Glebe Road, 11th Floor
Arlington, Virginia 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
JAR:caj

NIXON & VANDERHYE P.C.

By Atty: Joseph A. Rhoads, Reg. No. 37,515

Signature: _____

[Handwritten Signature]



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

VELKE et al.

Atty. Ref.: 3696-61

Serial No. 10/712,261

TC/A.U.: 3671

Filed: November 14, 2003

Examiner: A KOVACS

For: WALK-BEHIND LAWN MOWER

March 8, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from
the last decision of the Examiner.

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(I) **REAL PARTY IN INTEREST**

The real party in interest is Wright Manufacturing, Inc., a Maryland corporation of the country of the United States.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1-26 have been canceled. Claims 27-30 are pending and have been rejected (claims 27-30 are on appeal). No claims have been substantively allowed.

(IV) STATUS OF AMENDMENTS

The Amendment After Final filed January 8, 2007 has been entered.

(V) SUMMARY OF EXAMPLE CLAIMED SUBJECT MATTER

This section is for purposes of example only and without limitation.

Claim 27 relates to a walk-behind lawn mower (e.g., Figs. 1-2; ¶0004) including an engine (e.g., 7 in Figs. 1-2; ¶0031) for driving at least one cutting blade (e.g., ¶0005); and a sulky (e.g., 1 in Figs. 1-3) attached to the mower. The sulky comprises a substantially vertical pivot axis structure which is aligned substantially vertical relative to the ground during normal sulky operation when the sulky trails behind the mower (e.g., 79 in Figs. 1-3; ¶0031), wherein a foot platform (e.g., 73 in Fig. 1; ¶0033) of the sulky pivots relative to a front arm (e.g., 75 in Figs. 1-3; ¶0033) of the sulky about a pivot axis defined by the substantially vertical pivot axis structure (e.g., 79 in Figs. 1-3; ¶0031). The sulky further includes a latch assembly (e.g., 65 in Figs. 2-3) for coupling a protruding member (e.g., 87 in Fig. 3; ¶0036) of the sulky to a spring-biased latch (e.g., 81 in Fig. 3; ¶¶ 0036, 0039) of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold the folded-up sulky in the stowed position (e.g., see Fig. 3).

In certain example embodiments, the protruding member (e.g., 87 in Fig. 3; ¶0036) extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky (e.g., see Figs. 3-4; ¶0037); and wherein the protruding member of the sulky is directly coupled to the spring-biased latch when the sulky is folded up in a stowed position (e.g., see Fig. 3), but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower (e.g., see Fig. 1).

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 27-30 are anticipated by Velke (US 5,810,371).

(VII) ARGUMENT

It is axiomatic that in order for a reference to anticipate a claim, it must disclose, teach or suggest each and every feature recited in the claim. See, e.g., Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). The USPTO has the burden in this respect.

Furthermore, with respect to the inherency rejections, the law is clear that for something to be “inherent” in a reference, it must “necessarily” be present. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The fact that a certain result or characteristic “may” occur or be present in the prior art is not sufficient to establish the inherence of that result of characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). The Board of Appeals has made clear that “[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

A. Section 102(b) Rejections Based On Velke (US 5,810,371)

Claim 27

Claim 27 stands rejected under 35 U.S.C. Section 102(b) as being allegedly anticipated by Velke. This Section 102(b) rejection should be reversed for at least the following reasons.

Claim 27 requires “a latch assembly for coupling a protruding member of the sulky to a spring-biased latch of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold

the folded-up sulky in the stowed position; wherein the protruding member extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky; and wherein the protruding member of the sulky is *directly coupled to the spring-biased latch* when the sulky is folded up in a stowed position, but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower.”

For purposes of example and without limitation, Figs. 2-3 illustrate that the protruding member (e.g., 87) of the sulky is directly coupled to the spring-biased latch (e.g., 81) when the sulky is folded up in a stowed position, and Fig. 1 illustrates that the protruding member (e.g., 87) of the sulky is not directly coupled to the spring-biased latch (e.g., 81) when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower. Example non-limiting latch 81 is “spring-biased” because it is biased by at least one spring (e.g., see spring 83; and paragraph [0034] of the instant specification).

Velke (US 5,810,371) fails to disclose or suggest the “*spring-biased latch*” called for by claim 27. The mere presence of a chain link 63 dangling from the dashboard area of the mower in Fig. 12 of Velke cannot possibly be considered a “spring-biased latch” as required by claim 27. Velke’s dangling chain link 63 is entirely unrelated to the spring-biased latch and latch assembly required by claim 27.

The Advisory Action contends that the spring-biased latch is not a positively recited limitation in claim 27. This allegation is incorrect. The spring-biased latch is positively recited twice in claim 27, and must be considered by the Examiner. This

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feature is part of the claim, and the cited art simply does not have it. The rejection is fundamentally flawed and should be reversed.

Claim 28

Claim 28 requires that “*the latch assembly is located under a dashboard of the mower.*” Velke fails to disclose or suggest the claimed latch assembly, and also fails to disclose or suggest a latch assembly under a dashboard as required by claim 28. The rejection of claim 28 should be reversed.

Claim 29

Claim 29 requires that “*a leading portion of the sulky is adapted to hit the buttress plate when the sulky is moved into the stowed position with excessive force.*” Velke fails to disclose or suggest this feature of claim 29. In Velke, no leading portion of the sulky is adapted to hit plate 29. This rejection should be reversed.

CONCLUSION

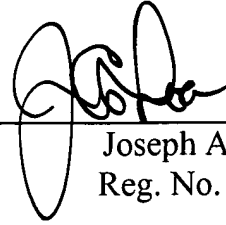
In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

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Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

A handwritten signature in black ink, appearing to read 'J. Rhoa', written over a horizontal line.

Joseph A. Rhoa
Reg. No. 37,515

JAR:cj
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

(VIII) **CLAIMS APPENDIX**

1-26. (Canceled)

27. A walk-behind lawn mower comprising:

an engine for driving at least one cutting blade;

a sulky attached to the mower, wherein the sulky comprises a substantially vertical pivot axis structure which is aligned substantially vertical relative to the ground during normal sulky operation when the sulky trails behind the mower, wherein a foot platform of the sulky pivots relative to a front arm of the sulky about a pivot axis defined by the substantially vertical pivot axis structure;

a latch assembly for coupling a protruding member of the sulky to a spring-biased latch of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold the folded-up sulky in the stowed position;

wherein the protruding member extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky; and

wherein the protruding member of the sulky is directly coupled to the spring-biased latch when the sulky is folded up in a stowed position, but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower.

28. The mower of claim 27, wherein the latch assembly is located under a dashboard of the mower.

29. The mower of claim 27, further comprising a buttress plate located laterally forward of the latch, so that a leading portion of the sulky is adapted to hit the buttress plate when the sulky is moved into the stowed position with excessive force.

30. The mower of claim 27, wherein the protruding member of the sulky extends outwardly from the vertical pivot axis of the sulky.

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(IX) EVIDENCE APPENDIX

None

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(X) **RELATED PROCEEDINGS APPENDIX**

None